

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

VILLAGE OF OLD MILL CREEK,
FERRITE INTERNATIONAL COMPANY,
GOT IT MAID, INC., NAFISCA ZOTOS,
ROBERT DILLON, RICHARD OWENS,
And ROBIN HAWKINS, both individually and
d/b/a ROBIN'S NEST,

Plaintiffs,

v.

ANTHONY M. STAR, in his official capacity as
Director of the Illinois Power Agency,

Defendant.

Case No. 1:17-cv-01163

District Judge Manish S. Shah

ELECTRIC POWER SUPPLY ASSOCIATION,
DYNEGY INC., EASTERN GENERATION
LLC, NRG ENERGY, INC., and
CALPINE CORPORATION,

Plaintiffs,

v.

ANTHONY M. STAR, in his official capacity as
Director of the Illinois Power Agency, and BRIEN
J. SHEAHAN, JOHN R. ROSALES, SADZI
MARTHA OLIVA, MIGUEL DEL VALLE, and
SHERINA MAYE EDWARDS, in their official
capacities as Commissioners of the Illinois
Commerce Commission,

Defendants.

Case No. 1:17-cv-01164

District Judge Manish S. Shah

**STATUS REPORT OF INTERVENOR
EXELON GENERATION COMPANY, LLC**

Intervenor Exelon Generation Co., LLC (“Exelon”) hereby submits the following status report in response to the Court’s inquiry at the April 13, 2017 status hearing concerning an invitation to the Federal Energy Regulatory Commission (“FERC”) to participate in these cases as *amicus curiae*. See No. 17-cv-1163, ECF No. 49; No. 17-cv-1164, ECF No. 70.

Exelon does not object to inviting FERC to participate as *amicus*. Exelon notes, however, that such an invitation may have limited utility. After the April 13 hearing, Exelon contacted FERC’s Office of General Counsel (“OGC”) regarding its potential participation as *amicus*, as we understand other entities did as well. OGC told Exelon—and, we understand, the other entities too—that FERC would prefer not to participate as *amicus* at this time, as FERC has pending before it complaints concerning the ZEC program. One of those complaints was filed by several of the Plaintiffs here and seeks to resolve the conflict they perceive between the ZEC program and FERC-approved wholesale market rules by changing the latter.¹ FERC cannot rule on the complaints pending before it until FERC has a quorum, and it is understandable that FERC wishes to avoid filing an *amicus* brief that could appear to prejudge a pending matter. If FERC were nevertheless invited to file a brief, FERC’s OGC stated that it would respond, but that its response would be limited by the foregoing considerations and rely heavily on statements from existing orders.

¹ In particular, the complainants ask FERC to require certain changes to the tariff of PJM Interconnection, L.L.C., concerning the bids that plants participating in the Illinois ZEC program are permitted to make in wholesale capacity auctions. See Mot. to Amend at 3, *Calpine Corp. v. PJM Interconnection, L.L.C.*, Docket No. EL16-49-000 (Jan. 9, 2017) (“Mot. to Amend”), <http://bit.ly/2oWAtf9>. According to the complainants, these changes are necessary because “State-approved subsidies ..., by design, interfere with economic signals for entry and exit,” *id.* at 13, and as a result, “the ZECs Legislation” will lead to “unjust and unreasonable” rates in the capacity market. *Id.* at 18. Complainants contend that by granting their requested relief, namely, changes to the tariff’s rules concerning permissible bids, FERC will “address the ... threat to the ... market” and will “ensure that [the legislation] do[es] not artificially suppress prices.” *Id.* at 3, 13.

April 20, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of Illinois, Eastern Division, using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished via the CM/ECF system.

Dated: April 20, 2017

By: /s/ Matthew E. Price